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Takashi Yamaguchi

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6471

21874

7590

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EDWARDS ANGELL PALMER & DODGE LLP

P.O. BOX 55874

BOSTON, MA 02205

EXAMINER

BODAWALA, DIMPLE N

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

***Response to Amendment***

Applicant's suggestion is fully considered but Examiner wishes to point out that the declaration under 37 CFR 1.132 filed on 4/30/2010 is insufficient to overcome the rejection of claims under 35 USC 112, first paragraph, as being failed to have sufficient support for the unit of the tensile strength in the instant disclosure, as set forth in the last office action because the declaration submitted with NPL document "Testing methods for tensile strength of adhesive bonds", wherein such document is published in Japanese language and Applicant fails to provide a legible translation copy of the NPL document. Therefore, the declaration under 37 CFR 1.132 filed on 4/30/2010 is not considered.

Furthermore, Applicant filed declaration on 6/1/2010 with response. Although the declaration is not being formally considered, the Declaration, filed on 6/1/2010 discussed the process of measuring tensile strength by pulling upward in the vertical direction at the time of fracture of the stud is beyond 50Kgf/0.78 mm<sup>2</sup>, which is an area of the stud, then concluded that the vertical strength is 64 Kgf/cm<sup>2</sup> which is beyond 50 Kgf/cm<sup>2</sup>, wherein such description teaches away from the claimed limitations as cited in claims of the instant application.

***Response to Arguments***

Applicant argues that the standard unit of vertical tensile strength is the Kgf/cm<sup>2</sup>, as previously declared to in the April 12, 2010 Yamaguchi declaration on units. Applicant argues that as documentary support for the units of vertical tensile strength, Japanese Industrial Standard for Testing Methods for Tensile Strength of Adhesive bonds (JIS K 6849) was previously submitted with partial translation. Applicant further argues that for a complete English reference document, the applicant refer the Examiner to publicly available ASTM D2095-96(2008) Standard Test Method for Tensile Strength of Adhesive by Means of Bar and Rod specimens, wherein the ASTM D2095-96(2008) test method covers the determination of the relative tensile strength of adhesive by the use of bar and rod shaped butt-joined specimens under defined conditions of preparation,

conditioning and testing, wherein this test method is applicable to the testing of adhesives with various adhered materials in either similar or dissimilar combinations. Applicant argues that the document is cited for the public record to show that the standard measurement unit of tensile strength, given in SI units, is Kgf/cm<sup>2</sup>.

In response to Applicant's arguments, the declaration under 37 CFR 1.132 filed on 4/30/2010 submitted with NPL document "Testing methods for tensile strength of adhesive bonds", wherein such document is published in Japanese language and Applicant fails to provide a legible translation copy of the NPL document. Therefore, Applicant has been advised to submit translation of legible copy of NPL document, in order to further consideration the declaration. Applicant has argued that "for a complete English reference document, the applicant refer the Examiner to publicly available ASTM D2095-96(2008) Standard Test Method for Tensile Strength of Adhesive by Means of Bar and Rod specimens, wherein the ASTM D2095-96(2008) test method covers the determination of the relative tensile strength of adhesive by the use of bar and rod shaped butt-joined specimens under defined conditions of preparation, conditioning and testing, wherein this test method is applicable to the testing of adhesives with various adhered materials in either similar or dissimilar combinations. Applicant argues that the document is cited for the public record to show that the standard measurement unit of tensile strength, given in SI units, is Kgf/cm<sup>2</sup>", wherein Applicant's position on this point is considered to be speculative attorney's argument unsupported by objective technical evidence on the issue. Attorney's arguments are not a substitute for evidence. Once a proper prima facie case of lack of ornamentality is established by the examiner, it is incumbent upon applicant to come forth with countervailing evidence to rebut the rejection made by the examiner. See *Ex parte Webb*, 30 USPQ2d 1064, 1067-68 (Bd. Pat. App. & Int. 1993). Arguments of counsel cannot take place of evidence in the record. See, *In re Schulze*, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965); *In re Pearson*, 494 F. 2d 1399, 1405, 181 USPQ 641, 646 (CCPA 1974).

Thus, Applicant's arguments are fully considered but not found persuasive, and, therefore, rejection of claims 1, 9, 13, 19 and 21-36 under 35 USC 112, first paragraph has been maintained.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIMPLE N. BODAWALA whose telephone number is (571)272-6455. The examiner can normally be reached on Monday - Friday at 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, PHILLIP C. TUCKER can be reached on (571) 272-1095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. N. B./  
Examiner, Art Unit 1791

/Philip C Tucker/  
Supervisory Patent Examiner, Art Unit 1791